

APPEAL NO. 030778
FILED MAY 13, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 10, 2003. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable occupational disease injury with a date of _____, and that he did not have disability because he did not sustain a compensable injury. In his appeal, the claimant challenges those determinations as being against the great weight of the evidence. The claimant also argues that the hearing officer applied an incorrect standard of proof. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable occupational disease injury with a date of _____. The claimant had the burden of proof on that issue. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The injury issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

In this instance, there was conflicting evidence on the issue of nature and duration of the keyboarding and data entry activities performed by the claimant in his job in the credit and activations department of the employer. The hearing officer determined that the evidence did not establish that the claimant sustained a compensable injury. He simply was not persuaded that the claimant sustained his burden of proving that his bilateral carpal tunnel syndrome was caused by repetitively traumatic activities he performed at work. The hearing officer was acting within his province as the fact finder in so finding. Nothing in our review of the record demonstrates that the challenged determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse the injury determination on appeal. Pool, *supra*; Cain, *supra*.

The 1989 Act requires the existence of a compensable injury as a prerequisite for finding disability. Section 401.011(16). Given our affirmance of the determination that

the claimant did not sustain a compensable injury, we likewise affirm the determination that the claimant did not have disability.

Finally, we consider the claimant's assertion that the hearing officer applied an incorrect standard of proof in this case. The claimant points to language in the hearing officer's discussion, specifically, his statement that the claimant "just was not able to meet the very stringent standards" to establish an occupational disease injury. Earlier on in the hearing officer's discussion, he properly identified what the claimant was required to show in order to prove the causal connection between his employment and his injury. Thus, it appears that the hearing officer's reference to a "very stringent standard" is more in the nature of a comment that the causation standard is difficult to meet as opposed to an indication that an improper standard of proof was applied. We perceive no error.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica Lopez
Appeals Judge